

Chief Ombudsman’s opinion under the Official Information Act

Legislation	Official Information Act 1982, section 18(d) (see appendix for full text)
Agency	The Treasury
Request for	Request for information relating to probable inflationary effects of personal tax cuts
Ombudsman	Peter Boshier
Case number(s)	CASE-013497
Date	26 March 2025

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Summary

A complaint was received under the Official Information Act 1982 (OIA), about the decision of the Treasury, to refuse a request for information relating to probable inflationary effects of personal tax cuts. The Treasury refused this request under section 18(d) of the OIA, on the basis that the information would soon be publicly available as part of the annual proactive release of Budget information. It is my final opinion that Treasury was entitled to refuse this request.

Ombudsman's role

1. I am authorised to investigate and review, on complaint, any decision by which a Minister or agency subject to the OIA refuses to make official information available when requested. My role in undertaking an investigation is to form an independent opinion as to whether the request was properly refused.

Background

- On 10 May 2024, Treasury received the request.
- On 24 May 2024, the requester advised Treasury that they were seeking this information to inform their public commentary on the matter.
- On 30 May 2024, the Minister of Finance released the 2024 Budget.
- On 10 June 2024, Treasury refused the request under section 18(d) of the OIA, on the basis that it was soon to be publicly available as part of the planned proactive release of Budget information. No release date was provided.
- On 11 July 2024, the requester contacted Treasury again regarding release of the requested information. Treasury advised that the information would be released in late August 2024.
- The requester subsequently complained to my Office and preliminary inquiries were made with Treasury.
- On 9 August 2024, Treasury responded to my Office's inquiries and confirmed its intention was to publish the requested information in late August 2024.
- On 13 September 2024, the proactive release of information was published online. Treasury contacted the requester to advise of the publication.

Investigation

2. Section 18(d) of the OIA gives agencies a discretion to refuse a request for information that is publicly available, or will soon be made publicly available. However, like any discretion, it must be exercised reasonably. This means that agencies should take into account all the relevant circumstances of the request and consider the overriding purpose and principles of the OIA.
3. If there is no reason why the information cannot be made available sooner, agencies should consider doing so. If there is still further work to be done to prepare for publication, such as quality-assurance, consultation and approval processes, delayed release is more likely to be reasonable, provided the delay is not undue. In cases where an agency has relied on section 18(d), I look:
 - a. Firstly, at whether the criteria in section 18(d) are made out (e.g. is there a planned process for release, is that to take place soon);
 - b. Secondly, at whether the discretion to refuse a request under section 18(d) has been exercised unreasonably (e.g. does refusal undermine any of the purposes of the OIA; can the information be made available more quickly).

Was there a planned process?

4. Section 18(d) could apply where agencies have a plan in place to publish information that is the subject of an OIA request. To justify refusal, the agency must be reasonably certain that the requested information will be published in the near future (and be able to articulate when and where). Refusal is more likely to be justified if there is a pre-existing decision to publish the specific information.
5. This includes situations like this, where budget information is routinely proactively published (following the release of the Budget by the Minister of Finance). At the time of this request, Treasury was already preparing for the planned proactive release of budget information. This included the information in scope of this request.
6. I note that Treasury did not advise the requester of the planned publication date when it originally refused the request. While it is good practice to provide a precise or approximate date, a failure to do so does not mean that section 18(d) cannot apply.
7. I note that Treasury did later advise the requester of the approximate publication date (in response to a follow-up query). It advised that it was likely to be published in late August 2024. This date is consistent with what it later advised my Office in response to preliminary inquiries regarding the complaint. This suggests, and I am satisfied, that Treasury was working on a planned release by a specific deadline at the time of the request.

Was Treasury reasonably certain that the information would be released ‘soon’?

8. Section 18(d) provides that a request may be refused if *‘the information is or will soon be publicly available.’* It is not a good reason for withholding information. Rather it provides a discretion to refuse a request because release of the information at issue is imminent.
9. I am satisfied that Treasury was reasonably certain that release of the requested information would be imminent. It had a clear publication process in place that was already underway at the time of the request. Treasury has advised that the proactive release of Budget information is the largest annual release of information made by the Government each year. The 2024 release included a wider scope of material than ever before (416 documents in total).
10. As such, consultation for the release required input from many organisations, agencies and Ministers. At the time the decision on the request was made, there was still a large amount of work to do to prepare the documents for publication including making redactions, quality assurance, consultation with staff and general review and sign-out processes.
11. As above, Treasury was however working towards a specific deadline of late August 2024. This was around eleven to twelve weeks from when it made its decision on the request. While this is a significant period, and would not usually fall within an Ombudsman’s expectation of ‘soon’, in this case I consider the period of time was reasonably imminent given the volume and complexity of the overall process. It is difficult to see how such a large and intricate process of release could reasonably be concluded in a much shorter period. Importantly, there was a date that Treasury was working towards for release.
12. Due to the extensive nature of this release, unforeseen delays relating to scoping, review and publishing arose towards the end of August. This resulted in an additional two to three weeks before the information was published online. While Treasury did not contact the requester to advise of the delay in publication, it did contact them on 13 September 2024 to advise that the information requested was now publicly available.
13. I am currently of the view that at the time the decision was made on the request on 10 June 2024, and in the circumstances of the significant release of Budget information, Treasury was reasonably certain that the information would be published ‘soon,’ and that it was doing what it could do in order to meet the planned publication date. Whilst it is important to consider what realistically needs to be done in order to meet the planned publication date, not all of this will be within an agency’s direct control. Given the volume of the overall release as well as the number of other agencies and Ministers involved, there is a clear basis to accept that Treasury had taken reasonable steps to ensure the information would be publicly available imminently and it would have been difficult to anticipate the delays.

14. I acknowledge that this may be a longer period than the requester might have previously waited to receive this type of information and that they do not consider it to be 'soon.' 'Soon' is generally defined as *within or after a short time*.¹ Successive Ombudsmen have considered that the term 'soon' is relative and what is considered soon will vary according to the particular context of the decision.
15. The requester raised concerns that if this timeframe was accepted as 'soon,' the timelines may extend each Budget cycle. I accept that each year may look different, depending on the particular information release. However, I expect that Treasury will comply with the requirements of the OIA and exercise any discretion (regarding use of section 18(d)) appropriately. I disagree that accepting the timeframe in this case automatically permits Treasury to apply the same timeframe to information releases in the future.
16. The requester also considered that I should set a maximum limit as to what can be considered 'soon.' I intentionally have not set a definitive time limit, as I recognise that each decision needs to be considered on a case-by-case basis. A timeframe that is acceptable in one case cannot arbitrarily be applied to a separate case. The range of what I (and previous Ombudsmen) have accepted as 'soon' illustrates this variability.
17. The circumstances in this case are particularly significant, in that the requested information was part of a much wider planned publication that occurs following an annual process. The volume, complexity and significance of this publication must be given appropriate weight, when considering whether the planned release was "soon" for the purposes of section 18(d).
18. For these reasons, my view is that it was open to Treasury to consider exercising the discretion in applying section 18(d) in this case.

Should the requested information have been made available sooner?

19. My view is that the discretion to refuse a request under section 18(d) should not be used where doing so would undermine any of the purposes of the OIA, which are set out in section 4. For example, if refusal of information relying on section 18(d) has the effect of preventing effective participation in the making and administration of laws or policies where the OIA provides no good reason for withholding the information, it could be seen as inconsistent with the stated purposes of the Act. Further, if there is no good reason why the information cannot be made available sooner than a planned release date, agencies should consider doing so.,
20. Treasury has advised that releasing individual pieces of Budget information (such as the document requested) outside of the proactive release process is disruptive to its ability to manage the overall release effectively. It has found that one large proactive release is the most efficient way to provide Budget information. It considers that it is important

¹ See definitions by Oxford Languages, Cambridge Dictionary and Collins English Dictionary.

that Budget advice is shared alongside other relevant information to ensure context and understanding. It believes if it was to release individual documents throughout the process, it would cause a strain on time and resources.

21. Given the unique nature and volume of the Budget proactive release, Treasury's preference to manage the process in such a way does not appear unreasonable. As well as this request, it received a number of other related requests that were also refused under section 18(d). If there was an expectation that all of these requesters would be provided with the relevant information at the time of the decisions on their requests, there could be a significant impact on the timeframe for the remainder of the Budget information being made publicly available. This could also mean that these documents would not accurately represent the context in which the advice was provided.
22. The requester advised Treasury that they wanted the requested information earlier to inform their public commentary on the matter. Treasury are of the view that this reasoning did not warrant releasing the information outside of the planned process.
23. The requester was also concerned that the timeframe could limit participation and accountability more generally. The example given was that a Minister could refer to or rely on the policy contained in a withheld document, without any immediate ability for the public to consider the underlying rationale and accuracy of the matter.
24. In respect of the broader participation and accountability concerns, I do not consider the passage of time means that the public are not able to scrutinise the policy rationale in the relevant documentation once it has been made available. While some matters may have moved on, there is still an expectation of accountability on the responsible Ministers. The more detailed policy rationale can be discussed on an ongoing basis. Further, there is nothing to prevent debate of the broader issues at an earlier stage, as the information released on Budget Day generally enables a high-level understanding of the approach.
25. While I absolutely support the public interest in enabling commentary on important constitutional processes like the Budget, my view is that this case, these interests are not strong enough to find that it was unreasonable for Treasury to exercise the discretion to refuse the request in the circumstances faced by Treasury.
26. I am also conscious that the purpose of the proactive release process is to ensure that all of the Budget information is made publicly available as soon as possible. This is in the public interest.
27. In future cases, there may be cause for certain information to be released outside of the planned process (for the reasons raised above or for other reasons). It is always open to a requester to put this to the agency. As explained above, section 18(d) should not be relied upon when doing so would undermine the purposes of the OIA.

Chief Ombudsman's opinion

28. For the reasons set out above, I have formed the final opinion that Treasury was entitled to refuse the request under section 18(d) of the OIA.

Appendix 1.

Official Information Act 1982

18 Refusal of requests

A request made in accordance with section 12 may be refused only for 1 or more of the following reasons, namely...

(d) that the information requested is or will soon be publicly available: